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5 Bill No. R-76-02--17

6 RESOLUTION NO. R- 08-76 .

7 A RESOLUTION authorizing the Common Council
8 of the City of Fort Wayne, Indiana to take necessary
9 steps to intervene in a lawsuit.

10 WHEREAS, heretofore on December 9, 1975, the Common Council
11 of the City of Fort Wayne, Indiana did pass and adopt General Ordinance No.
12 G-29-75 As Amended, which was approved and signed by the Mayor of said
13 City and enacted into law on December 16, 1975; and

14 WHEREAS, in accordance with Section 14 of said Ordinance there
15 was established The Fire Department Merit System Committee; and

16 WHEREAS, Section 2 of said Ordinance provides that, with the
17 exception of the Chief every member of the Fire Department appointed by the
18 Mayor or by the Board of Public Safety shall hold his present rank unless
19 and until he is demoted by said Board in compliance with the terms of said
20 Ordinance; and

21 WHEREAS, the plain intent of said Ordinance as therein
22 stated provides that a member may be demoted only for cause other than
23 politics; and

24 WHEREAS, the Mayor of the City of Fort Wayne, Indiana, sub-
25 sequent to January 1, 1976 has demoted members of said Fire Department with-
26 out cause and only for politics, and

27 WHEREAS, the laws of the State of Indiana, divide the functions
28 of the government of the City of Fort Wayne, Indiana into legislative
29 department (the Common Council and Executive department (the Mayor); and

30 WHEREAS, such action by the Mayor usurps the function of the
31 Common Council as the legislative body of the City of Fort Wayne, Indiana,
32 being in effect a repeal of said Ordinance by the Mayor; and

33 WHEREAS, it is essential to the integrity of the governmental
34 process that the Executive body recognize the pre-eminence of the Legislative
35 Department in its field just as the Legislative body must recognize the
pre-eminence of the Executive Department in its field; and


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3 WHEREAS, said Firemen have instituted an action captioned ---
4 Bentley et al; v. The City of Fort Wayne, which action was filed in Allen Superior
5 Court, Allen County, Indiana and docketed as Cause Number S-76-312 in which
6 cause of action the plaintiffs challenge the actions of the Executive branch of
7 said City government as being in disregard of a valid Ordinance of said City
8 namely, said General Ordinance No. G-29-75.

9
10 NOW THEREFORE, BE IT RESOLVED THAT THE COMMON COUNCIL
11 OF THE CITY OF FORT WAYNE, INDIANA take the necessary steps, to intervene
12 in said hereinabove mentioned law suit and as such intervenor take such steps
13 as are required to insure that the afore said Ordinance is enforced by the
14 Executive Branch of the City Government of the City of Fort Wayne, Indiana.

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Councilman

Approved as to form and legality of this 9th day of
February, 1976



Attorney for the Common Council
of the City of Fort Wayne, Indiana

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steps to intervene in a lawsuit.

10 WHEREAS, heretofore on December 9, 1975, the Common Council
11 of the City of Fort Wayne, Indiana did pass and adopt General Ordinance No.
12 G-29-75 As Amended, which was approved and signed by the Mayor of said
13 City and enacted into law on December 16, 1975; and
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15 WHEREAS, in accordance with Section 14 of said Ordinance there
16 was established The Fire Department Merit System Committee; and

17 WHEREAS, Section 2 of said Ordinance provides that, with the
18 exception of the Chief every member of the Fire Department appointed by the
19 Mayor or by the Board of Public Safety shall hold his present rank unless
20 and until he is demoted by said Board in compliance with the terms of said
21 Ordinance; and
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23 WHEREAS, the plain intent of said Ordinance as therein
24 stated provides that a member may be demoted only for cause other than
25 politics; and

26 WHEREAS, the Mayor of the City of Fort Wayne, Indiana, sub-
27 sequent to January 1, 1976 has demoted members of said Fire Department with-
28 out cause and only for politics, and

29 WHEREAS, the laws of the State of Indiana, divide the functions
30 of the government of the City of Fort Wayne, Indiana into Legislative
31 Department (the Common Council and Executive Department (the Mayor); and
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WHEREAS, such action by the Mayor usurps the function of the Common Council as the Legislative Body of the City of Fort Wayne, Indiana, being in effect a repeal of said Ordinance by the Mayor; and

WHEREAS, it is essential to the integrity of the governmental process that the Executive Body recognize the pre-eminence of the Legislative Department in its field just as the Legislative Body must recognize the pre-eminence of the Executive Department in its field; and

WHEREAS, said Firemen have instituted an action captioned --- Bentley et al; v. The City of Fort Wayne, which action was filed in Allen Superior Court, Allen County, Indiana and docketed as Cause Number S-76-312 in which cause of action the plaintiffs challenge the actions of the Executive Branch of said City Government as being in disregard of a valid Ordinance of said City namely, said General Ordinance No. G-29-75.

NOW THEREFORE, BE IT RESOLVED THAT THE COMMON COUNCIL OF THE CITY OF FORT WAYNE, INDIANA take the necessary steps to intervene in said hereinabove mentioned law suit and as such intervenor take such steps as are required to insure that the aforesaid Ordinance is enforced by the Executive Branch of the City Government of the City of Fort Wayne, Indiana.

Winfield C. Moses, Jr.

Councilman

Approved as to form and legality of this 9th day of
February, 1976
John H. Logan
Attorney for the Common Council
of the City of Fort Wayne, Indiana

Read the first time in full and on motion by _____, seconded by _____, and duly adopted; read the second time by title and referred to the Committee on _____ (and the City Plan Commission for recommendation) and Public Hearing to be held after due legal notice, at the Council Chambers, City-County Building, Fort Wayne, Indiana, on _____, the _____ day of _____, 197____, at _____ o'clock P.M., E.S.T.

Date: _____ CITY CLERK

Read the third time in full and on motion by Moses, seconded by Hinga, and duly adopted, placed on its passage. Passed (~~lost~~) by the following vote:

	AYES	NAYS	ABSTAINED	ABSENT	TO-WIT
TOTAL VOTES	<u>5</u>	<u>3</u>		<u>1</u>	
BURNS	_____	<u>✓</u>	_____	_____	_____
HINGA	<u>✓</u>	_____	_____	_____	_____
HUNTER	_____	<u>✓</u>	_____	_____	_____
MOSES	<u>✓</u>	_____	_____	_____	_____
NUCKOLS	_____	_____	_____	<u>1</u>	_____
SCHMIDT, D.	_____	<u>✓</u>	_____	_____	_____
SCHMIDT, V.	<u>✓</u>	_____	_____	_____	_____
STIER	<u>✓</u>	_____	_____	_____	_____
TALARICO	<u>✓</u>	_____	_____	_____	_____

DATE: 2-10-76 Charles W. Westerman
CITY CLERK

Passed and adopted by the Common Council of the City of Fort Wayne, Indiana, as (Zoning Map) (General) (Annexation) (Special) (Appropriation) Ordinance (Resolution) No. 2-08-76 on the 10th day of February, 1976.

Charles W. Westerman ATTEST: (SEAL) James Stier
CITY CLERK PRESIDING OFFICER

Presented by me to the Mayor of the City of Fort Wayne, Indiana, on the 11th day of February, 1976, at the hour of 11:00 o'clock 4 M., E.S.T.

Charles W. Westerman
CITY CLERK

Approved and signed by me this _____ day of _____, 197____, at the hour of _____ o'clock _____ M., E.S.T.

Witnessed by the Mayor
MAYOR

Read the first time in full and on motion by _____, seconded by _____, and duly adopted, read the second time by title and referred to the Committee on _____ (and the City Plan Commission for recommendation) and Public Hearing to be held after due legal notice, at the Council Chambers, City-County Building, Fort Wayne, Indiana, on _____, the _____ day of _____, 197____, at _____ o'clock P.M., E.S.T.

Date: _____ CITY CLERK

Read the third time in full and on motion by Loluris, seconded by Jung, and duly adopted, placed on its passage. Passed (~~lost~~) by the following vote: 2/3 vote to override the Mayor

	AYES	NAYS	ABSTAINED	ABSENT	TO-WIT
<u>Veto</u>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
TOTAL VOTES	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
BURNS	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
HINGA	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
HUNTER	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
MOSES	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
NUCKOLS	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
SCHMIDT, D.	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
SCHMIDT, V.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
STIER	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
TALARICO	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

DATE: 2/23/76 Charles W. Detlema
CITY CLERK

Passed and adopted by the Common Council of the City of Fort Wayne, Indiana, as (~~Zoning Map~~) (~~General~~) (~~Annexation~~) (~~Special~~) (~~Appropriation~~) Ordinance (Resolution) No. R-08-76 on the 24th day of February, 1976.

ATTEST: (SEAL)

Charles W. Detlema CITY CLERK James Stier PRESIDING OFFICER

Presented by me to the Mayor of the City of Fort Wayne, Indiana, on the _____ day of _____, 197____, at the hour of _____ o'clock _____ M., E.S.T.

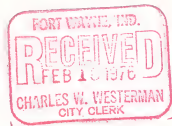
Approved and signed by me this _____ day of _____, 197____, at the hour of _____ o'clock _____ M., E.S.T.

MAYOR



FORT WAYNE, INDIANA 46802

office of the mayor



VETO MESSAGE

I, Robert E. Armstrong, Mayor of the City of Fort Wayne, hereby veto Resolution R-08-76 for the following reasons:

A law suit against the City has already been filed by a number of firefighters allegedly aggrieved by this Administration's adherence to state law giving the Mayor and his Board of Safety absolute and complete control over operation of the Fire Department. This Resolution, which seeks to have the City Council become a party to that law suit, is an obvious and blatant attempt to have the City pay the costs of the action against itself.

The pending action was brought by several individual firefighters, and the attendant costs should be borne by them and them alone. It is unfair to expect the taxpayers of Fort Wayne to bear the costs of a law suit filed by individuals.

The issue will be resolved without the intervention of City Council as a plaintiff and, if the members of the City Council are truly concerned about the firefighters named as plaintiffs in the aforementioned action, they will join the suit as individuals and pay their share of the costs themselves.

I maintain that it establishes unacceptable precedent to permit two branches of the same government to commence legal action against each other, particularly in view of the fact that the costs of such action are, of necessity, paid by the taxpayers.

This Administration would be totally remiss in its duty to the taxpayers if we relinquished our obligation to administer the Fire Department; but, more especially, if we allowed the taxpayers to pay the private legal expenses of individuals with public funds such action would be a misappropriation of public funds.

Signed this 18th day of February, 1976.


Robert E. Armstrong
Mayor

REA:ip



Pursuant to law I, Charles W. Westerman, Clerk of Fort Wayne, Clerk of the Common Council, on this date, February 24, 1976, presented to the members of the Common Council Bill No. R-76-02-17 --- Resolution No. R-08-76 vetoed by Robert E. Armstrong, Mayor of the City of Fort Wayne, for deliberation and action pursuant to the law by this legislative body.

Charles W. Westerman
Clerk of the City of Fort Wayne